Co. (C. C. A. 1915) 221 Fed. 209; *cf. Shappirio* v. *Goldberg* (1904) 192 U. S. 232, 24 Sup. Ct. 259. It therefore appears that in the instant case the defendant could not for the first time notify the plaintiff of its rescission at the very moment when the plaintiff tendered performance. This reasoning would have supplied a sounder basis for the result reached in the instant case.

CONTRACTS—MEASURE OF DAMAGES FOR BREACH—RATE OF EXCHANGE.—The defendant, a London merchant, had failed to perform his contract to sell and deliver in Canada to the plaintiff, a foreign buyer, a quantity of canned salmon. Since the rate of exchange at the time of the trial differed considerably from that at the date of breach, it became necessary to determine at what date the ratio of dollars to sterling should be fixed. *Held,* damages must be assessed at the rate of exchange at the time of the breach and not at the date of judgment. *Lebeaupin* v. *Crispin & Co.* (K. B. 1920) 36 T. L. R. 739.

Although the rule of the principal case was temporarily denied in *Kirsch* v. *Allen* (1920) 36 T. L. R. 59, it represents the present state of the English law. *Barry* v. *Van den Hurk* (1920) 36 T. L. R. 663. The measure of damages for the breach of a contract is the difference between the contract price and the market value at the time when and the place where the goods were to have been delivered. English Sale of Goods Act (1893) § 51, subd. 3; Uniform Sales Act, § 67, subd. 3. The intention is to place the plaintiff in the same position in which he would have been, had the contract been performed. See *Wertheim* v. *Chicoutimi Pulp Co.* (1911) A. C. 301, 307. As a matter of business usage, a buyer, in order to carry on his business, immediately purchases goods to replace those he was to have received under the contract. If the law is to presume conclusively that the buyer does so, damages should indemnify the plaintiff, not for what he would suffer, were he to buy at the time of the judgment, but for what he has suffered in *having* bought. Accordingly, since the pounds furnished by the foreign buyer to enable his agent in Canada to buy similar goods upon breach are converted into dollars at the then current rate of exchange, damages in pounds to reimburse him for his expenditure must be calculated at that rate. Furthermore, if damages were assessed at the rate of exchange at the time of the judgment, the plaintiff would be enabled to jockey with the amount recoverable by according the time of the trial with the rate of exchange most favorable to him. This difficulty is satisfactorily obviated by crystallizing the damages at the time of the breach.

CORPORATIONS—OFFICERS—DUTIES TOWARD STOCKHOLDERS.—The president of a corporation purchased stock at par from other shareholders, without disclosing an offer to him by another corporation to purchase the stock and pay a bonus therefor. He then resold the stock and received the bonus. *Held,* the president did not act in a fiduciary capacity in purchasing the stock, and was not bound to turn over the profits to the stockholders. *Keely* v. *Black* (N. J. 1920) 111 Atl. 22.

In dealing with the general property of a corporation, the directors are commonly regarded as quasi-trustees for the corporation. 3 Pomeroy, Equity (4th ed. 1919) § 1090. A director may not recover on a contract yielding him a profit on transactions between a third party and the corporation. *Landes* v. *Hart* (1909) 131 App. Div. 6, 115 N. Y. Supp. 337. According to the majority of cases, this fiduciary relation does not extend to the stockholders of the corporation and hence a

director may purchase stock of the corporation without restriction, and is under no duty to disclose to the stockholders all the information he may possess regarding the value of the stock. *Commissioners of Tippecanoe Co.* v. *Reynolds* (1873) 44 Ind. 509; *Crowell v. Jackson* (1891) 53 N. J. L. 656, 23 Atl. 426; see *Carpenter* v. *Danforth* (N. Y. 1868) 52 Barb. 581. Of course, if there is actual fraud the director is liable. And officers cannot issue new stock at par to themselves, knowing that it is actually worth much more than they paid for it. *Agricultural Society* v. *Eichholz* (1891) 45 Kan. 164, 25 Pac. 613. It is true that a director is not a strict fiduciary, since he does not actually receive anything for the stockholders. But he occupies a position of confidence, possesses special information and his acts affect the rights of the shareholders. 3 Pomeroy, *loc. cit.* The rules of trust relations are often applied in guardian and ward cases, where good faith is essential, although no real trust exists. *Brandau* v. *Greer* (1909) 95 Miss. 100, 48 So. 519. For the same reason the obligations of a fiduciary relation should rest on the directors of a corporation to the extent of requiring them to disclose all that they know relative to the value of stock, before purchasing it from a stockholder of the corporation. *Stewart* v. *Harris* (1904) 69 Kan. 498, 77 Pac. 277; *Oliver* v. *Oliver* (1903) 118 Ga. 362, 45 S. E. 232; see *Black* v. *Simpson* (1912) 94 S. C. 312, 77 S. E. 1023. At least a director should be under such a duty when he is in a position to know and control the value of the stock. *Strong* v. *Rapide* (1909) 213 U. S. 419, 29 Sup. Ct. 521. The instant case is in accord with the weight of authority but is doubtful on principle.

CRIMINAL LAW—FORMER JEOPARDY.—The defendant had been convicted on a charge which stated no offense in law. Furthermore, the trial was irregular because of the failure to summon the injured party. Later in the day the defendant was prosecuted again on the same facts, and he interposed a plea of former jeopardy. *Held,* one judge dissenting, the first conviction being illegal, double jeopardy is no defense. *State* v. *Collins* (Wash. 1920) 191 Pac. 831.

The vital points in the trial in determining whether there has been a former jeopardy are the complaint, information or indictment, and the proceedings. If the complaint in the earlier trial is void, the better reasoned cases hold that neither a conviction nor payment of the penalty permits the defendant to raise the defense of former jeopardy. *Davidson* v. *State* (1884) 99 Ind. 366; *Robinson* v. *State* (1875) 52 Ala. 587 (*Semble*). This obviates the possibility of a collusive complaint and can work no substantial injustice. It has the further virtue of certainty. Many courts, however, hold, curiously enough, that payment of the penalty after conviction upon a defective complaint "cures" the invalidity and operates as a former jeopardy. *Davis* v. *State* (1897) 37 Tex. Crim. Rep. 359; *Commonwealth* v. *Loud* (1841) Mass., 328; *Cherry* v. *State* (1912) 103 Miss. 225, 60 So. 138 (*semble*). Though technically correct, these decisions make for collusion. A prisoner who pays a nominal penalty after conviction upon a charge which states no offense, can hardly avoid a suspicion of duplicity. A few courts permit the "curing" of void complaints by mere conviction thereon, regardless of the penalty. *State* v. *George* (1876) 53 Ind. 434; *Davis* v. *State, supra* (*semble*). If, on the other hand, the complaint is valid, but the proceedings are irregular, it is generally held that a conviction results in former jeopardy. *Henry* v. *State* (1910) 97 Miss. 787, 53 So. 397; *Smithey* v. *State* (1908) 93 Miss. 257, 46 So.